SUPREME COURT, U. S.

FILED

JUL 22 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 204

HERBERT S. BAUCH, as President of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and ELIZABETH BOND, CLARA LEVINE, SHIRLEY FEINBERG and ELIZABETH McGEE on behalf of themselves and all other employees of the City of New York who have executed authorizations for payroll deductions in favor of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, similarly situated,

Petitioners,

against

THE CITY OF NEW YORK, JOHN V. LINDSAY, Mayor of the City of New York, MARIO PROCACCINO, Comptroller of the City of New York, HENRY SHEMIN, Commissioner of Labor of the City of New York, and HERBERT HABER, Director of Labor Relations of the City of New York,

Respondents.

PETITIONERS' REPLY BRIEF

SAMUEL J. COHEN,
Attorney for Petitioners,
605 Third Avenue,
New York, New York 10016,
Tel. No. 682-6078.

Of Counsel:
COHEN AND WEISS,
SAMUEL J. COHEN,
STANLEY M. BERMAN.

IN THE

Supreme Court of the United States

October Term, 1968

No. 204

HERBERT S. BAUCH, as President of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and ELIZABETH BOND, CLARA LEVINE, SHIRLEY FEINBERG and ELIZABETH MCGEE on behalf of themselves and all other employees of the City of New York who have executed authorizations for payroll deductions in favor of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, similarly situated,

Petitioners,

against

THE CITY OF NEW YORK, JOHN V. LINDSAY, Mayor of the City of New York, MARIO PROCACCINO, Comptroller of the City of New York, HENRY SHEMIN, Commissioner of Labor of the City of New York, and HERBERT HABER, Director of Labor Relations of the City of New York,

Respondents.

PETITIONERS' REPLY BRIEF

The brief of the Respondents, filed in opposition to the petition for a writ of certiorari herein, plainly discloses a purpose to suppress minority freedom of expression and association.

Scarcely concealed under euphemistic verbiage is the plan to exterminate minorities as part of a bargained *quid pro quo* granted by the City to appease the appetites of certain majority groups.

The City states that the plan was adopted "to meet a need for more effective collective bargaining" (p. 6). Such an objective is as unassailable as being against sin. How is it to be achieved, however?

The City's brief goes on to state that ". . . the City Program confers upon the majority organization a clearly defined and delineated role in effectuating the City purpose of preserving continuity of governmental functioning" (p. 6). Here is another harmless generality, borrowed and used out of context, but totally devoid of factual content. The next statement is more revealing:

> "The objective of the Program cannot be achieved by procedures which *stimulate or give aid and encouragement to wasteful rival organizational campaigns* disrupting stability in the bargaining relations between the City and the freely chosen majority representative." (p. 6; emphasis added.)

This statement, too, is evidently borrowed, and used out of context. In its present context it can only mean that allowing an employee to pay dues to a minority union of his choice by use of the City's bookkeeping machinery is "aid and encouragement to wasteful rival organizational campaigns." Thus it becomes brutally clear that the City has concluded that it must keep the little unions down in order to appease the big unions.

Any remaining doubt as to the City's purpose is dispelled by the further statement purporting to set forth the City's rationale for exclusivity of check-off:

> ". . . it enables the majority-chosen organization, during the continuance of its collective bargaining agency, *to withstand, with less harm to its representative functioning, the effects of wasteful rivalries and disruptive minority campaigns.* . . . As such, it tends to create a climate which promotes freedom to contract and facilitates reaching of agreement." (p. 7; emphasis added.)

How does a majority union "withstand, with less harm," etc., under this logic, except by suppression of the minority? What is the alleged "climate which promotes freedom to contract" other than a climate of sterility in which opposition has been smothered?

Reference to constitutionally untested uses of allegedly similar discriminatory arrangements are not helpful. As the petition herein shows, this case is the first instance in which constitutionality has been before the Court. It is also of little help to make references to the private sector where compulsion by state action is lacking. Even in the private sector no judicial support for the constitutionality of exclusive check-off can be found.

The City concludes that its measure should be upheld as a reasoned enactment founded upon "a rational basis." The foregoing analysis of its alleged reasoning shows that there is no "rational basis" founded upon fact, but that this is an "unreasoned distinction," supported by mere verbiage, such as this Court has struck down on many occasions, a distinction which flagrantly destroys minority rights without even a colorable claim of legitimate necessity for the majority.

Respectfully submitted,

SAMUEL J. COHEN,
Attorney for Petitioners.

COHEN AND WEISS,
SAMUEL J. COHEN,
STANLEY M. BERMAN,
Of Counsel.